

matter to the appointing authority to conduct an internal review. On February 7, 2018, the appointing authority filed an internal complaint against the petitioner alleging that, on or about November 1, 2011, he tampered with a witness, harassed, and made terroristic threats against Darren Woolridge. It is noted that the appointing authority has not yet issued a Preliminary Notice of Disciplinary Action (PNDA) specifically listing administrative charges against the petitioner.

In the instant request, the petitioner asserts that he remains suspended without pay despite that the criminal charges against him have been dismissed and no other charges are pending against him. In addition, the petitioner argues that over 85 days have passed since the criminal charges were dismissed and the appointing authority has failed to issue a disciplinary action or reinstate him to employment. He adds that a PNDA must be served on a permanent employee at the time a disciplinary action is contemplated. Since there is no pending charges against the petitioner, fundamental fairness should be applied to protect the petitioner from continued oppression, harassment, or egregious deprivation by reinstating him to employment, and such conduct and the delay in reinstating him to employment cannot be appropriately addressed by monetary damages. In this regard, he has experienced economic losses including back pay, salary, pension contributions, and medical benefits. The petitioner states that his future career has been jeopardized as he has experienced loss of reputation, loss of time, loss of ability, and inability to return to the Academy. The petitioner adds that he has been out of work for years and, if he is reinstated, the parties would merely be placed in the same positions prior to when he was suspended. The petitioner maintains that the public interest will not be affected and the community will not be harmed if his request to be reinstated is granted. The petitioner adds that the appointing authority possessed sufficient knowledge regarding the alleged incidents involving the petitioner when he was suspended in 2011. The petitioner contends that, if the appointing authority planned to bring a disciplinary action against him, it should have issued a PNDA at the time of the first indictment against him. Moreover, the appellant asserts that failure to reinstate him will significantly impact the community's perception of him, as keeping an exonerated employee suspended without charges is inappropriate.

Additionally, the petitioner maintains that he has a clear likelihood of success on the merits. Specifically, the appellant asserts that the 45-day rule pursuant to *N.J.S.A. 40:14-147* provides that a complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based and the 45-day limit shall begin on the day after the disposition of the criminal investigation. The petitioner contends that the Assembly notes define disposition of the criminal investigation to include grand jury action, court trial and all appeals taken thereto. *See Assembly No. 2630-L. 1988, c.145.*

Moreover, the petitioner states that the 45-day rule does not apply if an investigation for a law enforcement officer for violation of internal rules is included directly within a concurrent investigation of that officer for a violation of the criminal laws.

In response, the appointing authority, represented by Albert C. Buglione, Esq., asserts that the criminal charges against the petitioner were recently dismissed in October 2017 and remanded to the appointing authority for review on February 1, 2018.² It explains that, effective February 7, 2018, it commenced a special investigation pertaining to the alleged criminal incidents involving the petitioner. As such, the appointing authority states it is reviewing the substance of the alleged criminal incidents and it has determined that administrative charges will be issued at some point. The appointing authority adds that it is expected that the petitioner will appear for additional interviews in furtherance of its internal investigation regarding the criminal allegations that were brought against him. In addition, the appointing authority contends that the instant request for interim relief is premature since there is an ongoing internal investigation against the petitioner.³ The appointing authority adds that it could not issue any disciplinary charges against the petitioner until all of the pending criminal charges against him were dismissed.

Additionally, the appointing authority maintains that the 45-day rule does not apply when the criminal charges constitute misconduct or conduct unbecoming pursuant to title 4A of the Administrative Code. The appointing authority contends that, since it is likely that the charges of incapacity or misconduct will be issued against the petitioner after the internal investigation is completed, the 45-day rule does not apply in this matter. The appointing authority adds that the 45-day rule is also inapplicable when there are charges of incompetency or inefficiency concerning a Police Officer's lack of fitness and incapacity to perform duties. The appointing authority explains that, pursuant to *N.J.S.A. 40A:14-147*, the 45-day rule is only applicable at the time the investigation is completed. As such, the appointing authority should have 45 days from the completion of its investigation to determine if the petitioner will be administratively charged. Moreover, the appointing authority asserts that any disciplinary proceedings it issues against the petitioner should not be considered untimely.

² The appointing authority states that, once the criminal charges were concluded, the Passaic County Prosecutor's Office issued a remand letter dated February 1, 2018. This procedural provision returned all issues involving the petitioner to the appointing authority for administrative review. Prior to February 1, 2018, the appointing authority states that no information was provided from the prosecutor pertaining to the criminal allegations against the petitioner. It adds that it must now review voluminous materials from the prosecutors office to determine whether or not charges are warranted.

³ The appointing authority indicates that the parties have scheduled a meeting to discuss the matter.

Finally, the appointing authority asserts that the petitioner's request in this matter should be denied as the factors outlined in *N.J.A.C. 4A:2-1.2* have not been met. The appointing authority maintains that the petitioner does not have a clear likelihood of success on the merits as a violation of the 45-day rule has not occurred. Additionally, it states that there is no danger of immediate or irreparable harm to the petitioner, and any financial harm that he experiences can be remedied with back pay in the event he prevails. Moreover, the appointing authority argues that it would be harmful to the public and the workplace if the petitioner is reinstated prior to conducting a *de novo* hearing.

In response, the petitioner reiterates many of the same arguments that he presented in his initial arguments on appeal. In addition, the petitioner maintains that he has a clear likelihood of success on the merits, as the appointing authority failed to properly file charges under the 45-day rule. The petitioner explains that, on February 7, 2018, the appointing authority filed an internal complaint against him involving an allegation of tampering with a witness, harassment, and terroristic threats that occurred on November 1, 2011. The petitioner contends that, prior to the February 7, 2018 complaint, the appointing authority never filed any internal charges against him. Further, the petitioner states that the 45-day time limit shall begin on the day after the disposition of the criminal investigation. The petitioner maintains that the disposition of the criminal case occurred some 21 months ago on May 17, 2016,⁴ and as such, the petitioner states that the appointing authority had 45 days from the disposition of the charges on May 17, 2016 to file an internal complaint. Rather, the petitioner states that the appointing authority waited an additional 21 months to file the internal charges. The petitioner argues that, even if the appointing authority states that it purposely waited for the disposition of the criminal charges to conduct the internal investigation, the disposition occurred December 17, 2017, 58 days before the appointing authority filed an internal complaint. The petitioner explains that, if the appointing authority wanted to bring administrative charges before December 11, 2017, it should have requested the documentation from the Prosecutor's Office so the internal complaint could have been filed within the 45-day deadline. He argues that, if the appointing authority wanted to bring internal charges against the petitioner with regard to the November 1, 2011 allegation, since Darren Woolridge was a former detective with the appointing authority, it had sufficient knowledge of the incident far before the February 7, 2018 internal complaint was issued. As such, the petitioner maintains that, as a result of the violation of the 45-day rule, he should be returned to his position and the internal complaint against him should be dismissed.

⁴ The petitioner explains that he was criminally charged with retaliation against a witness in the second degree and terroristic threats. A bench trial was conducted on May 17, 2016 with regard to the indictment which resulted in a direct verdict acquittal on both counts.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

N.J.S.A. 11A:2-13 and *N.J.A.C.* 4A:2-2.7(a)2 allow an individual to be indefinitely suspended if he or she has been charged with crimes of the first, second or three degree. The standard for determining that such an indefinite suspension is appropriate is whether the public interest would best be served by suspending the individual until the disposition of the charges. The public interest is best served by suspending such an individual if, based on the criminal charges, that individual is unfit for duty, a hazard to any person if permitted to remain on the job, or that such a suspension is necessary to maintain safety, health, order or effective direction of public services. See *N.J.A.C.* 4A:2-2.7(a)1. Whether an individual will ultimately be found guilty of the criminal charges is not at issue in determining whether the indefinite suspension is appropriate. Further, *N.J.A.C.* 4A:2-2.7(a)2 states that an indefinite suspension may not last beyond the disposition of the criminal complaint or indictment.

In this matter, it is clear that the criminal charges supported the necessity for an indefinite suspension. Pursuant to the above listed rules, an indefinite suspension may *only* be imposed when an individual has a criminal complaint or indictment pending. Since the petitioner had criminal charges and an indictment pending at the time of his suspension, it is clear that the appointing authority had a valid basis to immediately and indefinitely suspend the petitioner based on the pending charges against him. With respect to the petitioner's argument that the charges and indictments were dismissed, such information does not change the outcome of the case or establish his contentions. The public interest is best served by not having an employee with such serious criminal charges pending on the job, especially when the charges relate to allegations dealing with the public trust and the employee is a law enforcement officer charged with protecting such trust. Since the petitioner was charged with a violation of the criminal law in the first, second, third, or fourth degree, the appointing authority's imposition of an indefinite suspension was appropriate. Moreover, the appointing authority's implementation of the indefinite suspension provides no basis to invalidate the imposition of the otherwise valid indefinite suspension. Although appointing authority apparently did not, at the time of the petitioner's indefinite suspension, issue a Preliminary or a Final Notice of Disciplinary Action indicating that the petitioner was indefinitely suspended pending the outcome of the criminal charges, the implementation of the

indefinite suspension was proper based on reasons noted above and any such procedural violations do not merit any remedy. *See N.J.A.C. 4A:2-2.7(a)3.*

Additionally, effective July 28, 2006, the 45 day time period for filing disciplinary charges was extended to Sheriff's Officers. *See N.J.S.A. 40A:9-117.6(a).* *N.J.S.A. 40A:14-147* provides that the 45 day time period commences on the date on which the person filing the complaint has sufficient notice of the conduct underlying the disciplinary charges. In cases where the administrative disciplinary charges are based on an underlying criminal complaint or indictment, the 45 day time limit commences on the date on which the charging party has notice of the disposition of the criminal complaint or indictment. *See In the Matter of Robert Collins and Thomas Cahill* (MSB, decided May 23, 2000) (Where criminal investigation ended on August 24, 1995 but Police Chief did not receive notice of the outcome of the investigation until August 28, 1995, administrative disciplinary charges filed on October 10, 1995 were timely). *Compare, In the Matter of Joseph Richardson* (MSB, decided December 21, 2005) (Former Police Chief had sufficient knowledge of the appellant's alleged misconduct on July 22, 2002, after he met with all principals involved in the June 18, 2002 incident. Since disciplinary charges were not brought until July 2004, well outside the 45 day time frame, it was concluded that the statute required dismissal of the disciplinary charges).

In this matter, the petitioner's arguments pertaining to the 45-day rule are unpersuasive. As noted above, when disciplinary charges are based on an underlying criminal complaint or indictment, the 45 day time limit commences on the date the charging party has notice of the disposition of the criminal complaint or indictment. In this matter, the Passaic County Prosecutor's Office notified the appointing authority by letter dated February 1, 2018 that the criminal investigation had ended. As such, the 45 day time frame did not commence *until* February 1, 2018, as that was the date the record reflects that the appointing authority actually received notice of the disposition of the charges. The mere fact that the criminal charges were dismissed in May 2016 and in October 2017 does not establish that there was a violation of the 45 day time frame. There is no substantive evidence to show that the appointing authority was aware that the charges were dismissed prior to February 1, 2018. Moreover, there could be no internal investigation initiated until the appointing authority was in receipt of the information from the Passaic County Prosecutor as of February 1, 2018. As such, the petitioner has not provided any substantive information to show that a violation of the 45-day rule occurred.

Finally, *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1* provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. The

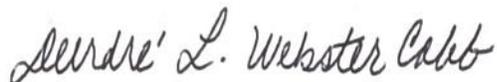
Commission notes that, as a result of the disposition of the criminal charges, the indefinite suspension has concluded. *See N.J.A.C. 4A:2-2.7(a)2*. As such, the appointing authority now must either reinstate the petitioner or issue a PNDA specifying the administrative charges for the suspension. In this regard, the petitioner has not satisfied any prongs under *N.J.A.C. 4A:2-1.2* regarding his request for reinstatement, since the potential harm he is experiencing is monetary in nature and can be remedied. It is clearly potentially harmful to the appointing authority and the public if an employee who is allegedly unfit is allowed to remain on the job. Although the petitioner claims that the harm to his reputation cannot be cured monetarily and it may impact his future career, the Commission does not agree. If the appointing authority actually issues administrative charges and they are subsequently dismissed, his suspension will be removed from his record.

While the appointing authority has apparently filed an “internal complaint” against the petitioner on December 11, 2017, a PNDA is required to be issued specifying administrative charges where an immediate suspension is sought and, thereafter, if a departmental hearing is requested, the full hearing should be held within 30 days of the date of the PNDA, and the FNDA should be issued by no later than 20 days from the date of the hearing. *See N.J.A.C. 4A:2-2.5(a)1, 4A:2-2.5(d) and 4A:2-2.6(d)*. As such, the appointing authority is directed to immediately issue a PNDA indicating the charges so a full departmental hearing can be conducted. That hearing should be scheduled as soon as possible. In the absence of a PNDA, the appointing authority should immediately reinstate the petitioner. If the appointing authority does not issue new administrative charges or return the petitioner to work, absent the issuance of an FNDA, the petitioner will be entitled to back pay, benefits, and seniority from the November 22, 2011 date of his indefinite suspension.

ORDER

The Civil Service Commission orders that the petitioner’s request for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27th DAY OF MARCH, 2018



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Acting Chair

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